LAWS AND RESOLUTIONS

OF THE

STATE OF MONTANA

PASSED AT THE

SECOND

EXTRAORDINARY SESSION

OF THE

EIGHTH LEGISLATIVE ASSEMBLY

HELD AT HELENA, THE SEAT OF GOVERNMENT OF SAID STATE,
on December 1st, 1903, and Ending on December 11th, 1903.

PUBLISHED BY AUTHORITY

Helena, Montana,
STATE PUBLISHING COMPANY,
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CERTIFICATE OF AUTHENTICATION.

UNITED STATES OF AMERICA,
STATE OF MONTANA, } ss.

I, Geo. M. Hays, Secretary of State of the State of Montana, do hereby certify that the printed laws and resolutions contained herein are true and correct copies of all the enrolled laws and resolutions that were passed at the Extraordinary Session of the Eighth Legislative Assembly of said State, held at Helena, the seat of government of said state, on the first day of December, A. D. 1903, and ending on the eleventh day of December, A. D. 1903, with the exception of corrections in orthography and punctuation, and omission or substitution words inserted in brackets.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of said State. Done (SEAL) at the city of Helena, the capital of said State of Montana, this fifteenth day of December, A. D. 1903.

GEO. M. HAYS,
Secretary of State.

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Officers and Members

of the Eighth Legislative Assembly of the State of Montana.

Governor, JOSEPH K. TOOLE,
Lieutenant-Governor and President of the Senate, FRANK G. HIGGINS.

STATE SENATORS

NAME	Politics	County	Postoffice Address
Albright, Jacob	Rep	Madison	Virginia City
*Anderson, Elmer J	Rep	Meagher	White Sulphur Springs
Bailey, J. W	Rep	Sweet Grass	Big Timber
*Biggs, Wesley M	Dem	Lewis and Clarke	Helena
Bourne, George Blake	Rep	Choteau	Hill
Brennen, William James	Rep	Flathead	Big Fork
*Conrow, John M	Dem	Park	Livingston
*Cullen, Thomas Patrick	Dem	Dawson	Glendive
Donlan, Edward	Rep	Missoula	Missoula
Durham, George P	Dem	Granite	Philipsburg
*Hoffman, Charles Wheeler	Dem	Gallatin	Bozeman
Hopkins, James Skinner	Dem	Rosebud	Forsyth
Johnson, Edward Anderson	Dem	Ravalli	Hamilton
*Kennedy. Jacob M	Dem	Deer Lodge	Anaconda
Kohrs, Conrad Carsten	Rep	Powell	Deer Lodge
Maddox, Fletcher	Rep	Cascade	Great Falls
Mahon, Archibald W	Dem	Valley	Glasgow
*Meyer, William Frederick	Rep	Carbon	Red Lodge
*Murray, James P	Dem	Beaverhead	Dillon
*McLean, Kenneth	Rep	Custer	Miles City
Ralston, Samuel Franklin	Dem	Teton	Chouteau
Sherlock, Henry Lloyd	Dem	Jefferson	Boulder
Tewey, Daniel	Dem	Silver Bow	Butte
Waite, John David	Rep	Fergus	Lewistown
Whipple, Charles A	Dem	Broadwater	Townsend
Yegen, Christian	Rep	Yellowstone	Billings,

*Holdovers, elected 1900.

X. K. STOUT, Secretary.

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HOUSE OF REPRESENTATIVES

NAME	Politics	County	Postoffice Address
Allen, William R.	Rep.	Deer Lodge	Anaconda
Arthur, Samuel	Dem.	Granite	Granite
Axtell, Frank B.	Lab.	Silver Bow	Butte
Bray, Charles H.	Rep.	Lewis and Clarke	Helena
Bray, William	Rep.	Rosebud	Rosebud.
Beaudry, Leon Edward	Lab.	Deer Lodge	Anaconda
Benson, Fred G.	Rep.	Lewis and Clarke	Helena
Bever, Chauncey C.	Rep.	Yellowstone	Billings
Brownlee, Robert.	Rep.	Sweet Grass	Melville
Buchanan, Patrick Blair	Rep.	Cascade	Belt
Burt, George W.	Rep.	Custer	Terry
Cannon, Harvey S.	Rep.	Flathead	Kalispell
Conner, Aaron	Rep.	Ravalli	Darby
Dempster, Charles W.	Lab.	Silver Bow	Butte
Downey, Timothy Driscoll	Dem.	Jefferson	Basin
Duggan, Lawrence	Lab.	Silver Bow	Butte
Dwight, Reuben	Rep.	Missoula	Missoula
Everett, Thomas Madison	Rep.	Choteau	Harlem
Farmer, Robert William	Fus. Dem	Silver Bow	Butte
Faust, Henry J.	Rep.	Powell	Ovando
Flaherty, John	Dem.	Jefferson	Cold Spring
Gagner, Frederick	Lab.	Deer Lodge	Anaconda
Gilligan, Harry Joseph	Rep.	Meagher	White Sulphur Springs.
Graham, Davis	Rep.	Missoula	Missoula
Harrison, William Henry	Rep.	Cascade	Neihart
Heffernlin, Charles Sumner	Rep.	Park	Livingston
Hilger, David	Dem.	Fergus	Lewistown
Hilman, John Roland	Rep.	Flathead	Columbia Falls
Johnson, Herbert Earle	Rep.	Broadwater	Winston
King, Ernest W.	Rep.	Fergus	Lewistown
Lancaster, John Wesley	Rep.	Ravalli	Stevensville
Lanstrum, Oscar Monroe	Rep.	Lewis and Clarke	Marysville
Lehson, Henry William	Rep.	Granite	Garnet
Lienemann, Louis	Fus. Dem	Silver Bow	Butte
Linderman, Frank Bird	Rep.	Madison	Sheridan
Lynch, James Henry	Anti-Tr D	Silver Bow	Butte
Martin, James E.	Dem.	Gallatin	Bozeman
Miller, Charles B.	Rep.	Lewis and Clarke	Helena
Miles, John H.	Rep.	Madison	Pony
Morrissey, John.	Lab.	Deer Lodge	Anaconda
Mullins, Patrick	Fus. Dem	Silver Bow	Butte
McCone, George	Rep.	Dawson	Reeta
MacDonald, Duncan A.	Rep.	Jefferson	Alhambra
MacGinniss, John	Fus. Dem	Silver Bow	Butte.
Noble, John M.	Rep.	Flathead	Kalispell.
O'Keefe, Timothy C.	Lab.	Deer Lodge	Anaconda
Owen, Charles Milton	Rep.	Missoula	Missoula
Pearson, Louis J.	Rep.	Cascade	Great Falls
Pelletier, Fred J.	Lab.	Silver Bow	Butte
Rice, James Horton	Rep.	Chouteau	Fort Benton
Sales, Walter Henry	Rep.	Gallatin	Manhattan
Self, James Madison	Rep.	Missoula	Plains
Schwend, Joseph H.	Lab.	Deer Lodge	Anaconda
Shannon, Joseph	Lab.	Silver Bow	Butte
Stadler, Louis.	Rep.	Lewis and Clarke	Helena
Stapleton, Guy W.	Fus. Dem	Silver Bow	Butte
Story, Nelson, Jr.	Rep.	Gallatin	Bozeman
Swindlehurst, Thomas Martin	Dem.	Park	Livingston
Sykes, Henry N.	Rep.	Custer	Ekalaka
Teal, Thomas Hilton	Rep.	Madison	Virginia City
Tolman, John N.	Rep.	Carbon	Red Lodge
Tooley, Clarence P.	Rep.	Meagher	Two Dot
Vagg, Harry A.	Rep.	Valley	Saco
Webb, Jonathan E.	Rep.	Teton	Chouteau
White, Benjamin F. (Speaker)	Rep.	Beaverhead	Dillon
Whiteley, William F.	Lab.	Silver Bow	Butte
Williams, David F.	Rep.	Broadwater	Radersburg
Wilson, Charles Albert	Rep.	Cascade	Great Falls
Wilson, John Barnes	Rep.	Lewis and Clarke	Helena
Wood, George Rodney	Dem.	Cascade	Great Falls
Woodworth, George	Rep.	Beaverhead	Wisdom
Word, Charles Francis	Dem.	Lewis and Clarke	Helena

NATHAN GODFREY, Chief Clerk.

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PROCLAMATION

Executive Office, Helena, Montana.

WHEREAS, a large per cent of the resident taxpayers of the state, and many representatives of organized labor and others, have by petitions and otherwise, represented to me the deplorable industrial condition existing in three of the populous cities of the state, as well as in many other localities within our borders, consequent upon the cessation of operations of many large industries in the state, and

WHEREAS, they further represent the desirability of general legislation by which the bias and prejudice of district judges be made a disqualification of such judges to try any case that may come before them or either of them, as well as legislation making suitable provision for the trial of such case or cases in such event, and also the desirability of general legislation conferring upon the supreme court power on appeal to review the facts in equity cases, and

WHEREAS, I have reason to believe that work will be forthwith resumed in all the suspended operations aforesaid if an extra ordinary session of the legislature is called to consider such legislation,

NOW THEREFORE, I, J. K. Toole, Governor of the State of Montana, disclaiming any reflection upon the integrity of the judiciary of this state, or any member thereof, but yielding solely to the exigency of the hour and the formidable requests presented to me by petition and otherwise, do hereby and by virtue of the power and authority in me vested by the Constitution convene the Eighth Legislative Assembly in extraordinary session, at Helena, Montana, the Capital of said State, at 12 o'clock M., on December 1, A. D. 1903, for the purpose of considering the legislation hereinbefore referred to and taking such action thereon as it may deem wise or expedient.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the great seal of the state of Montana to be affixed.

[Seal]

DONE at Helena, the Capital, this tenth day of November A. D. one thousand nine hundred and three.

J. K. TOOLE, Governor.

By the Governor:

GEO. M. HAYS, Secretary of State.

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LAWS OF MONTANA

Passed at the Second Extraordinary Session of the Eighth Legislative Assembly, 1903.

CHAPTER 1.

"An Act to amend Section 21 of the Code of Civil Procedure, relating to the powers and duties of the Supreme Court on appeals."

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1.

That Section 21 of the Code of Civil Procedure, be, and the same is, hereby amended so as to read as follows:

Section 21.

Supreme Court.—Powers and Duties in Appealed cases.

The Supreme Court may affirm, reverse, or modify any judgment or order appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had. The decision of the court must be given in writing and a syllabus thereof must be prepared by the court and filed with the opinion; and in giving its decision, if a new trial be granted, the court must pass upon and determine all the questions of law involved in the case, presented upon such appeal, and necessary to the final determination of the case. Its judgment in appealed cases must be remitted to the court from which the appeal was taken. In equity cases, and in matters and proceedings of an equitable nature, the Supreme Court

Supreme Court.—Duty to review the facts upon the evidence in appealed equity cases.

shall review all questions of fact arising upon the evidence presented in the record, whether the same be presented by specifications of particulars in which the evidence is alleged to be insufficient or not, and determine the same, as well as questions of law, unless, for good cause, a new trial or the taking of further evidence in the court below be ordered. Provided, that nothing herein shall be construed to abridge, in any manner, the powers of the Supreme Court in other cases.

Section 2.

All Acts, and parts of Acts, in conflict with this Act, are hereby repealed.

Section 3.

This Act shall take effect and be in force from and after its passage.

Approved December 10, 1903.

CHAPTER 2.

An Act entitled "An Act to Amend Section 615 of the Code of Civil Procedure relating to the change of the place of trial of civil actions."

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1. That Section 615 of the Code of Civil Procedure be, and the same is, hereby amended so as to read as follows:

Court must, on motion, change place of trial.

Section 615. The court or judge must, on motion, change the place of trial in the following cases:

1. When the county designated in the complaint is not the proper county.

2. When there is reason to believe that an impartial trial cannot be had therein.

3. When the convenience of witnesses and the ends of justice would be promoted by the change.

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4. When, from any cause, the judge is disqualified from acting; but in case the parties shall agree in writing upon another district judge, or upon a member of the bar as judge pro tempore, as provided for by the constitution; or if any qualified district judge shall be called in and shall within thirty days after the motion is made, appear and assume jurisdiction of the cause and of all matters and proceedings therein, no change of the place of trial shall be made. If such judge shall so appear he shall be vested with, and shall exercise, in said cause, all the authority of the judge of the district in which said action or proceeding may be pending.

Section 2. All Acts, and parts of Acts, in conflict with this Act, are hereby repealed.

Section 3. This Act shall take effect and be in force from and after its passage.

Approved December 10, 1903.

CHAPTER 3.

An Act entitled "An Act to Amend Section 180 of the Code of Civil Procedure, relating to the Disqualification of Judges."

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1. That Section 180 of the Code of Civil Procedure be, and the same is, hereby amended so as to read as follows:

Section 180. Any justice, judge or justice of the peace must not sit or act as such in any action or proceeding: Disqualification of Judges.

1. To which he is a party, or in which he is interested.

2. When he is related to either party by consanguinity or affinity within the sixth degree, computed according to the rules of law.

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3. When he has been attorney or counsel for either party in the action or proceeding, or when he rendered or made the judgment, order or decision appealed from.

4. "When either party makes and files an affidavit as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a District Judge by reason of the bias or prejudice of such judge. Such affidavit may be made by any party to an action, motion or proceeding, personally, or by his attorney or agent, and shall be filed with the Clerk of the District Court in which the same may be pending at any time before the day appointed or fixed for the hearing or trial of any such action, motion or proceeding. Upon the filing of the affidavit the judge as to whom said disqualification is averred, shall be without authority to act further in the action, motion or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the action or proceeding to some other court, nor to the power of calling in another district judge to sit and act in such action or proceeding. No more than five judges can be disqualified for bias or prejudice, in said action or proceeding, at the instance of the plaintiff, and no more than five at the instance of the defendant in said action or proceeding, and this limitation shall apply however many parties or persons in interest may be plaintiffs or defendants in such action or proceeding."

Section 2. All Acts, and parts of Acts, in conflict with this Act, are hereby repealed.

Section 3. This Act shall take effect and be in force from and after its passage and approval by the Governor.

Approved December 10, 1903.

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CHAPTER 4.

"An Act Entitled, "An Act Providing for the submitting to the qualified electors of the State of Montana, for their approval or rejection, Amendments to Articles 18 of the Constitution of the State of Montana, by adding thereto three new Sections as follows:

Amendments to Art. 18 of the Constitution to be submitted.

Section 3. Prohibiting the employment of Children under sixteen years of age in under-ground mines.

Section 4. Making a period of eight hours a day's labor on public works, and in mills, smelters and underground mines.

Section 5. Providing for legislation to enforce the provisions of this Article.

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1. There shall be submitted to the qualified electors of the State of Montana, at the next general election to be held within this State, the following amendments to Article XVIII of the Constitution of the State of Montana, relating to Labor:

Section 3. It shall be unlawful to employ children under the age of sixteen (16) years of age in underground mines.

Prohibiting employment of children in underground mines.

Section 4. A period of Eight Hours shall constitute a day's work on all works or undertakings carried on or aided by any Municipal, County or State Government, and on all contracts let by them, and in Mills and Smelters for the treatment of ores, and in under-ground mines.

Hours of labor on public works, and in Mills, Smelters, and underground mines.

Section 5. The Legislature by appropriate legislation shall provide for the enforcement of the provisions of this Article.

Enforcement by legislation.

Section 2. The vote upon this Amendment shall be counted and canvassed by such persons, and in such manner as provided by law for the counting and can-

Canvass of votes.

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vassing of the vote for Member of Congress, and if a majority of all the votes cast at said election, for and against said amendment shall be in favor of the amendment, the Governor of the State shall immediately so declare by public proclamation, and said amendment shall be in full force and effect as part of the Constitution from and after the date of said proclamation.

Proclamation of Governor.

Ballots.

Section 3. The official ballots to be used at the general election to be held in November, 1904, shall have printed thereon the following words: "For the Amendment to the Constitution Relating to the Rights of Labor," and the words: "Against the Amendment to the Constitution, Relating to the Rights of Labor."

Section 4. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

Section 5. This Act shall take effect and be in force from and after its passage and approval.

Approved December 10, 1903.

CHAPTER 5.

"An Act to amend Chapter IV, Title IV, Part II, Code of Civil Procedure, by adding thereto after Section 619 two additional sections to be numbered 620 and 621, relating to the payment of costs on the disqualification of a judge or the change of place of trial in civil actions."

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1.

Section 620, 621. added to Code Civ. Proc.

That Chapter IV, Title IV, Part II, Code of Civil Procedure be, and the same is, hereby amended by adding thereto after Section 619 two sections to be numbered 620 and 621 and to read as follows:

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Section 620.

Party obtaining change of place of trial by affidavit disqualifying judge, must pay to opposite party costs incurred for witnesses.

Where an affidavit is filed disqualifying a judge as provided in the fourth subdivision of Section 615, after the action or proceeding is set for trial or hearing, the party filing the same shall pay to the opposite party all costs necessarily incurred in securing the attendance of witnesses between the date the order was made fixing the day of hearing or trial and the time the affidavit was filed, and such costs so paid shall not be recoverable in the action or proceeding.

Section 621.

County to which action is transferred shall recover all extra costs incurred thereby.

In case of a change of the place of trial from one county to another as provided for in Section 615, of this code, the county in which the action or proceeding is tried shall recover from the county in which the action was commenced all additional costs or expenses that may have been incurred by such county by reason of extra jurors or bailiff's fees, or other court expenses incurred by such county by reason of the hearing or trial of said action, motion or proceeding; such extra costs shall be allowed by the court, and the Clerk of the court of such county shall certify the same to the Board of County Commissioners of the county in which said action, motion or proceeding was commenced, and said Board shall allow and cause the same to be paid.

Section 2.

All Acts, and parts of Acts, in conflict with this Act are hereby repealed.

Section 3.

This Act shall take effect and be in force from and after its passage.

Approved December 11, 1903.

HOUSE BILL NO. 7.

An Act Entitled An Act Appropriating Money for the Mileage and Per Diem of the Members, for the Pay

of Officers and Attaches, and all Incidental Expenses of the Extraordinary Session of the Eighth Legislative Assembly of the State of Montana, convened at Helena, Montana, December 1st, 1903.

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1. There is hereby appropriated out of the monies in the State Treasury, not otherwise appropriated, the sum of Fifteen Thousand Dollars, or so much thereof as may be necessary, for the Mileage and Per Diem of the Members, for the pay of Officers and Attaches, and for all incidental Expenses of the Extraordinary Session of the Eighth Legislative Assembly of the State of Montana, convened at Helena, Montana, December 1st, 1903.

Section 2. This Act shall be in force and effect from and after its passage and approval.

Approved Dec. 10th, 1903.

HOUSE BILL NO. 8.

An Act Entitled, "An Act appropriating money for the payment of the salary of a stenographer in the office of the Superintendent of Public Instruction, for the year 1904."

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1. That the sum of Twelve Hundred Dollars ($1200.00) or so much thereof as the State Board of Examiners deem necessary, be, and the same is hereby appropriated out of any money in the State Treasury not otherwise appropriated, for the payment of the salary of a stenographer in the office of the Superintendent of Public Instruction for the fiscal year 1904.

Section 2. The State Auditor is hereby authorized to draw his warrant for the payment of the said salary

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as herein stipulated in Section 1 of this Act, and the State Treasurer is directed to pay the same.

Section 3. This Act shall be in force and effect from and after its passage and approval by the Governor.

Approved Dec. 11, 1903

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